

1 EDMUND G. BROWN JR.
2 Attorney General of the State of California
3 DAVID S. CHANEY
4 Chief Assistant Attorney General
5 ROCHELLE C. EAST
6 Senior Assistant Attorney General
7 THOMAS S. PATTERSON
8 Supervising Deputy Attorney General
9 LILY A. KORMAN, State Bar No. 242688
10 Deputy Attorney General
11 455 Golden Gate Avenue, Suite 11000
12 San Francisco, CA 94102-7004
13 Telephone: (415) 703-5507
14 Fax: (415) 703-5843
15 Email: Lily.Korman@doj.ca.gov

16 Attorneys for Defendants A. Tucker, B. Curry, V.
17 Khan, D. N. McCall, A. E. Roberts, and P. Barker

18
19 IN THE UNITED STATES DISTRICT COURT
20
21 FOR THE NORTHERN DISTRICT OF CALIFORNIA
22
23 SAN FRANCISCO DIVISION

24
25 **JAMES G. GARCIA,**

26 Plaintiff,

27 C 07-6262 CRB (PR)

28 v.

29 **BEN CURRY, Warden, et al.,**

30 Defendants.

31
32 **DECLARATION OF L.
33 KORMAN IN SUPPORT OF
34 DEFENDANTS' MOTION
35 FOR SUMMARY JUDGMENT**

36 I, Lily A. Korman declare:

37 1. I am a Deputy Attorney General in the California Attorney General's Office, and counsel of
38 record for Defendants A. Tucker, B. Curry, V. Khan, D. N. McCall, A. E. Roberts, and P. Barker
39 in this matter. I am competent to testify to the matter set forth herein, and if called upon to do so,
40 I would and could so testify. I submit this declaration in support of Defendants motion for
41 summary judgment.

42 2. Attached as Exhibit A is a declaration from the Ironwood State Prison custodian of
43 records authenticating Exhibit B below from the central file of inmate James Garcia CDCR #

44 Decl. Korman Supp. Defs.' Mot. Summ. J.

45 *J. G. Garcia v. B. Curry, et al.*
46 C 07-6262 CRB (PR)

1 K26584.

2 3. Attached as Exhibit B is a true and correct copy of rules-violation report log no. 09-06-044
3 for Inmate James Garcia (CDCR # K26584).

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5 I declare under penalty of perjury that the foregoing is true and correct. Executed at San
6 Francisco, California, on September 2, 2008

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Lily A. Korman
Deputy Attorney General

EXHIBIT A

DECLARATION OF CUSTODIAN OF RECORDS

I, Linda Crone, declare as follows:

I am a Correctional Case Records Manager employed by the California Department of Corrections and Rehabilitation at Ironwood State Prison, Blythe, California. In this capacity, I am the duly authorized custodian of records maintained on inmates committed to the custody of the California Department of Corrections and Rehabilitation and housed at this institution.

A central file is maintained on each inmate housed in the California Department of Corrections and Rehabilitation. The file is maintained by the Records Office at each institution housing the inmate, and transferred with the inmate to any other institution.

The documents and entries in documents pertaining to an inmate are prepared at or near the time of their occurrence by person with knowledge of the circumstances or events.

The documents attached hereto are true and correct copies of documents from the confidential file of inmate James G. Garcia, CDC # K26584, and maintained in the regular course of business by the Department of Corrections and Rehabilitation at this institution.

I declare under penalty of perjury that I am competent to testify as a witness, that the foregoing is true and correct and based on my personal knowledge except for those statements based on information and belief, and as to those statements I believe them to be true, and that if called as a witness, I would so testify.

Executed on June 5, 2008 at Blythe, California.


Linda Crone,
Correctional Case Records Manager,
Declarant

EXHIBIT B

RULES VIOLATION REPORT

T.A.B.E. Score is 6.4

C NUMBER K-26584	INMATE'S NAME GARCIA	RELEASE/BOARD DATE LIFE	INST CTF-NOR	HOUSING 0331 RB-203L	LOG NO. V-09-06-044
VIOLATED RULE NO(S). CCR §3005(b)		SPECIFIC ACTS Refusing To Prone Out During An Emergency		LOCATION A Yard	DATE 9/29/2006
TIME 1550					

CIRCUMSTANCES

On 9/29/2006, at approximately 1550 hours, while I was assigned as A-Yard Crew Officer, 2/W, a Code-1 was announced on B-Yard, Shasta Hall. All inmates who were on the yard were ordered to assume a prone position via the PA System. All inmates proned out except Inmate **GARCIA**, K-26584, RB-203L. I approached Garcia and ordered him to assume a prone position. Garcia blatantly ignored my order to assume a prone position. I again ordered Garcia to lay flat on his stomach and to assume a prone position. Garcia stated, "Well I am refusing, how about that?" I asked Garcia if he was refusing a direct order, he stated, "Call it what you want to call it." Due to the close proximity of non-affected inmates who did comply with the orders to assume a prone position, I stepped back away from Garcia and maintained a safe distance from him. Upon the Code-1 alarm being secured, I contacted A-Yard Sergeant L. Locke and informed him of what was transpiring. Sergeant Locke approached and I explained in detail about Garcia's actions, which caused a serious disruption of facility operations, and his acts of disobedience and disrespect which by reason of intensity and context created a potential for mass disruptive conduct within the established program here in the CTF-North A-Yard.

Inmate **GARCIA** is aware of this CDC-115 RVR and the specific charge. Inmate **GARCIA** is not a mental health patient / participant at any level of care, and did not exhibit behavior that was bizarre, unusual, or uncharacteristic at the time of the events documented in this Rules Violation Report. A referral to the Health Care Services Department for Mental Health Assessment was not made.

REPORTING EMPLOYEE (Typed Name and Signature) ► R. Gomez, Correctional Officer <i>R. Gomez</i>			DATE 10-3-06	ASSIGNMENT A-Yard Crew Officer, 2/W	RDO'S S/S
REVIEWING SUPERVISOR'S SIGNATURE ► L. S. Locke, Correctional Sergeant <i>L. S. Locke</i>			DATE 9-30-06	<input type="checkbox"/> INMATE SEGREGATED PENDING HEARING N/A	
CLASSIFIED <input type="checkbox"/> ADMINISTRATIVE <input checked="" type="checkbox"/> SERIOUS	OFFENSE DIVISION: "F" 00-30	DATE 10-5-06	CLASSIFIED BY (Typed Name and Signature) ► J. C. Camacho, Correctional Lieutenant <i>J. C. Camacho</i>	HEARING REFERRED TO <input type="checkbox"/> HO <input checked="" type="checkbox"/> SHO <input type="checkbox"/> SC <input type="checkbox"/> FC	
COPIES GIVEN TO INMATE BEFORE HEARING					
<input type="checkbox"/> CDC-115	BY: (STAFF'S SIGNATURE) ► <i>D. Shaefer</i>	DATE 10-5-06	TIME 0000	TYPE OF SUPPLEMENT	
<input type="checkbox"/> INCIDENT REPORT LOG NUMBER:	BY: (STAFF'S SIGNATURE) ► <i>D. Shaefer</i>	DATE	TIME	BY: (STAFF'S SIGNATURE) ► <i>D. Shaefer</i>	DATE TIME

HEARING:

PLEA: Inmate **GARCIA** made no plea, therefore the SHO entered a plea of NOT GUILTY for Inmate **GARCIA**. Inmate **GARCIA** stated, "I'll speak to it in court. You got balls." Inmate **GARCIA** had no further statement for this hearing.

PLEA: Inmate **GARCIA** pled NOT GUILTY.

FINDINGS: Inmate **GARCIA** has been found GUILTY of being in violation of CCR §3005(b), specifically Refusing To Prone Out During An Emergency.

(FINDINGS CONTINUED ON PART-C, PAGE 4 of 4)

DISPOSITION: Assessed 30 Days Forfeiture of Credit, which is consistent with a Division "F" Offense, CCR §3323(h)(3); 30 Days Loss Of Red Card Yard Privileges from 10/10/2006 until 11/9/2006; Counseled and Reprimanded.

DISPOSITION CONTINUED ON CDC-115C

ADDITIONAL DISPOSITION: Inmate **GARCIA** was advised he will receive a completed copy of the CDC-115 RVR upon final audit by the Chief Disciplinary Officer.

REFERRED TO CLASSIFICATION BPT / NAEA

ACTION BY: (TYPED NAME) ► V. S. Khan, Correctional Lieutenant, (SHO)		SIGNATURE ► <i>V. Khan IT</i>	DATE 10/10/06	TIME 1843
REVIEWED BY: (TYPED NAME) ► A. Tucker, Facility Captain <i>A. Tucker</i>		DATE OCT 26 2006	CHIEF DISCIPLINARY OFFICER'S SIGNATURE ► G.A. Ortiz, Associate Warden, CDO <i>G.A. Ortiz</i>	
<input type="checkbox"/> COPY OF CDC 115 GIVEN TO INMATE AFTER HEARING		BY: (STAFF'S SIGNATURE) ► <i>V. S. Khan IT</i>	DATE 10/31/06	TIME 1520
CDC 115 (7/88)				

CDC NUMBER K-26584	INMATE'S NAME GARCIA	LOG NUMBER V-09-06-044	INSTITUTION CTF-NORTH	TODAY'S DATE 10/10/06
<input type="checkbox"/> SUPPLEMENTAL	<input checked="" type="checkbox"/> CONTINUATION OF: <input type="checkbox"/> 115 CIRCUMSTANCES <input checked="" type="checkbox"/> HEARING <input type="checkbox"/> IE REPORT <input type="checkbox"/> OTHER			

HEARING: Inmate GARCIA appeared before the Senior Hearing Officer on 10/10/06, at 1843 hours. The purpose for the hearing was explained.

Inmate GARCIA requested a thirty day extension to prepare for the CDC-115 hearing. Inmate GARCIA did not provide this SHO with a reasonable need to postpone the CDC-115 Hearing. Inmate GARCIA had more than forty-eight hours to prepare for the hearing, gather a list of his witnesses and prepare questions for the witnesses. The SHO denied Inmate GARCIA request. Inmate GARCIA requested the following witnesses at the hearing; Reporting Employee, Correctional Officer R. Gomez, Correctional Officer T. Gleason, and Correctional Officer A. Munoz. When this SHO asked Inmate GARCIA why he wanted Officer Gleason and Officer Munoz at the hearing and their relevance, due to neither staff member being mentioned in the report, Inmate GARCIA remained silent and would not respond. I again asked Inmate GARCIA the relevance of both staff witnesses, and he continued to remain silent. I denied the presence of Officers Gleason and Munoz in that they were not mentioned in the report and Inmate GARCIA would not tell me why they were requested at this hearing. Per §3315(e)(1)(B), this SHO determined the witnesses had no relevant or additional testimony to add to this hearing by Inmate GARCIA's refusing to answer my question concerning their relevance. Inmate GARCIA refused to elaborate why they were relevant to his defense. Inmate GARCIA then loudly demanded, and stated, "I'm going to question them!" This SHO then asked Inmate GARCIA for the questions he wanted this SHO to ask the Reporting Employee at the hearing. Inmate GARCIA angrily stated, "I'm not going to give you the question, you call the witnesses in and I'm going to question them and they'll give you the answer!" Inmate GARCIA stated to the SHO that he had a list of questions he wanted to ask the witnesses. The SHO asked Inmate GARCIA for the questions and Inmate GARCIA told the SHO he would not give the questions to the SHO. I attempted to explain to Inmate GARCIA how the process of questioning staff and inmate witnesses is conducted during the hearing process and this SHO will determine if the questions are relevant. Inmate GARCIA became loud and continued to speak over this SHO; interrupting the SHO. This SHO made numerous attempts to explain to Inmate GARCIA the procedure for witnesses at the RVR hearing. Inmate GARCIA continued to speak loudly and interrupt this SHO each time. Inmate GARCIA refused to cooperate during his RVR hearing. This SHO continued my attempts to get Inmate GARCIA to reveal the questions he wanted to ask to the Reporting Employee. Inmate GARCIA repeatedly stated, "I'm not going to provide the questions to you." This SHO attempted to contact the Reporting Employee, who was on his RDO but was unavailable. The SHO asked Inmate GARCIA if he wanted to continue with the hearing. Inmate GARCIA would not answer this question and continued to be loud and uncooperative, not answering the SHO. The SHO continued to ask Inmate GARCIA what relevant question he was going to ask the Reporting Employee and Inmate GARCIA still would not answer. Inmate GARCIA then stated that this SHO was an accomplice to this CDC-115 hearing, and the SHO was no longer the Hearing Officer. Inmate GARCIA was disruptive and continued to interrupt the SHO when trying to explain the CDC-115 hearing procedure. Inmate GARCIA stated to the SHO, "I already know what you're going to say." The SHO spent approximately ten minutes or more attempting to explain the CDC-115 hearing process to Inmate GARCIA, specifically the staff witness portion of the hearing. Inmate GARCIA was uncooperative and disruptive by speaking over the SHO and interrupting the SHO during the entire CDC-115 hearing process. This SHO was patient and took a considerable amount of time in affording that Inmate GARCIA's due process was not violated. Inmate GARCIA's behavior during the entire RVR process by being uncooperative, loud, defiant, and additionally by not responding to relevant questions by this SHO. Inmate GARCIA's conduct impeded his own hearing process. This SHO went above and beyond to accommodate Inmate GARCIA during his RVR hearing.

HEARING CONTINUED ON PART-C, PAGE

SIGNATURE OF WRITER: V. S. Khan, Correctional Lieutenant, SHO		DATE SIGNED: 10/10/06
GIVEN BY: (Staff's Signature) <i>John S. Khan</i>		DATE SIGNED: 10/10/06
		TIME SIGNED: 1520
<input type="checkbox"/> COPY OF CDC 115-C GIVEN TO INMATE		

CDC NUMBER K-26584	INMATE'S NAME GARCIA	LOG NUMBER V-09-06-044	INSTITUTION CTF-NORTH	TODAY'S DATE 10/10/06
<input type="checkbox"/> SUPPLEMENTAL	<input checked="" type="checkbox"/> CONTINUATION OF: <input type="checkbox"/> 115 CIRCUMSTANCES <input checked="" type="checkbox"/> HEARING <input type="checkbox"/> IE REPORT			<input type="checkbox"/> OTHER

HEARING CONTINUED:

The SHO asked Inmate GARCIA the following questions:

Q: "Did you hear the announcement over the public address system to assume a prone position?"

A: "I don't have anything to say to you."

Q: "Did you assume a prone position during the alarm?"

A: "No response."

Q: "Did you see other inmates on the yard in a prone position?"

A: "No response."

Q: "Inmate Garcia, are aware of Correctional Training Facility, Operational Procedure # 77?"

A: "No I'm not. No response."

This concludes the HEARING portion.

INMATE'S HEALTH: Inmate GARCIA stated that his health is fine.

MHDS: Inmate GARCIA is not a mental health patient / participant at any level of care. Inmate GARCIA is not a mental health patient / participant as a CCCMS/EOP and did not exhibit behavior that was bizarre, unusual, or uncharacteristic at the time of the events documented in this Rules Violation Report.

Date of discovery: 9/29/06

Initial RVR copy issued on: 10/05/06

Hearing started on: 10/10/06

Last document issued to inmate on: 10/05/06

DA postponed date: N/A

DA results issued date: N/A

TIME CONSTRAINTS:

STAFF ASSISTANT (SA): A Staff Assistant was not assigned, as the criteria per CCR 3315(d)(2) were not met. Inmate GARCIA is fluent in English. He read the charges and stated he understands the charges and does not need assistance to defend himself. **T.A.B.E.:** A review of the Educational Department's "T.A.B.E." Reading score test list was reviewed by the Senior Hearing Officer, pursuant to the Armstrong Remedial Plan. Inmate GARCIA's "T.A.B.E." Reading Score is 6.4.

INVESTIGATIVE EMPLOYEE (IE): An Investigative Employee was not assigned, as the criteria per CCR 3315(d)(1) were not met.

EVIDENCE REQUESTED OR USED: NO

VIDEO TAPE EVIDENCE: NO

INMATE PLEA AND STATEMENT: Inmate GARCIA made no plea, therefore the SHO entered a plea of NOT GUILTY for Inmate GARCIA. Inmate GARCIA stated, "I'll speak to it in court. You got balls." Inmate GARCIA had no further statement for this hearing.

WITNESSES REQUESTED: Correctional Officers R. Gomez, T. Gleason, and A. Gomez.

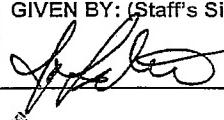
WITNESS TESTIMONY AT HEARING: N/A

CONFIDENTIAL INFORMATION: N/A

FINDINGS: This finding is based on the information provided in the Rules Violation Report, in which the Reporting Employee, Correctional Officer, R. Gomez, documents that;

- 1) On 9/29/06, at approximately 1550 hours, a "Code 1" was announced on B-yard. All inmates on the yard were ordered to assume a prone position via the P.A. system. All inmates were in the prone position except Inmate GARCIA, K-26584, RB-203L.
- 2) I Approached Inmate GARCIA and ordered him to assume a prone position. Inmate GARCIA blatantly ignored my order to assume a prone position. I again ordered Inmate GARCIA to lay flat on his stomach and assume a prone position. Inmate GARCIA stated, "Well, I am refusing, how about that?" I asked Inmate GARCIA if he was refusing a direct order, and he stated, "Call it what you want to call it."

CONTINUED ON PART-C, PAGE 4 of 4

SIGNATURE OF WRITER: V. S. Khan, Correctional Lieutenant, SHO		DATE SIGNED: 10/10/06
<input type="checkbox"/> COPY OF CDC 115-C GIVEN TO INMATE	GIVEN BY: (Staff's Signature) 	DATE SIGNED: 10/31/06
		TIME SIGNED: 1520

STATE OF CALIFORNIA

RULES VIOLATION REPORT - PAR

DEPT. OF CORRECTIONS & REHABILITATION

PAGE 4 of 4

CDC NUMBER K-26584	INMATE'S NAME GARCIA	LOG NUMBER V-09-06-044	INSTITUTION CTF-NORTH	TODAY'S DATE 10/10/06
<input type="checkbox"/> SUPPLEMENTAL	<input checked="" type="checkbox"/> CONTINUATION OF: <input type="checkbox"/> 115 CIRCUMSTANCES <input checked="" type="checkbox"/> HEARING <input type="checkbox"/> IE REPORT <input type="checkbox"/> OTHER _____			

CONTINUATION:

- 3) Due to the close proximity of non-affected inmates who did comply with the orders to assume a prone position, I stepped back away from Inmate GARCIA and maintained a safe distance from him.

This concludes the FINDINGS of this hearing.

ADDITIONAL DISPOSITION: While the SHO was counseling Inmate GARCIA on his responsibility during an alarm. This SHO attempted to hand a copy of Correctional Training Procedure, Operation Procedure # 77 (Inmates responsibilities during alarm responses for CTF Yard), Inmate GRACIA refuse the documentation stating, "I don't want it."

ENEMY CONCERNS: N/A

APPEAL RIGHTS: Inmate GARCIA was also advised of his right to appeal, the methods of appealing, and credit restoration procedures.

SIGNATURE OF WRITER: V. S. Khan, Correctional Lieutenant, SHO	DATE SIGNED: 10/10/06
GIVEN BY: (Staff's Signature) 	DATE SIGNED: 10/10/06
TIME SIGNED: 1520	

COPY OF CDC 115-C GIVEN TO INMATE

CDC NUMBER K-26584	INMATE'S NAME GARCIA	VIOLATED RULE NO(S). CCR§ 3005(b)	DATE 9/29/2006	INSTITUTION CTF-NORTH	LOG NO. V-09-06-044
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REFERRAL FOR FELONY PROSECUTION IS LIKELY IN THIS INCIDENT YES NO

POSTPONEMENT OF DISCIPLINARY HEARING

<input type="checkbox"/> I DO NOT REQUEST my hearing be postponed pending outcome of referral for prosecution	INMATE'S SIGNATURE ► <i>N/A</i>	DATE
<input type="checkbox"/> I REQUEST my hearing be postponed pending outcome of referral for prosecution	INMATE'S SIGNATURE ► <i>N/A</i>	DATE

DATE NOTICE OF OUTCOME RECEIVED

DISPOSITION

<input type="checkbox"/> I REVOKE my request for postponement	INMATE'S SIGNATURE ► <i>N/A</i>	DATE
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STAFF ASSISTANT

STAFF ASSISTANT <input type="checkbox"/> REQUESTED <input type="checkbox"/> WAIVED BY INMATE	INMATE'S SIGNATURE ►	DATE
<input type="checkbox"/> ASSIGNED DATE NAME OF STAFF		
<input checked="" type="checkbox"/> NOT ASSIGNED REASON <i>DNMC Per CCR 3315(d)(2)</i>		

INVESTIGATIVE EMPLOYEE

INVESTIGATIVE EMPLOYEE <input type="checkbox"/> REQUESTED <input type="checkbox"/> WAIVED BY INMATE	INMATE'S SIGNATURE ►	DATE
<input type="checkbox"/> ASSIGNED DATE NAME OF STAFF		
<input checked="" type="checkbox"/> NOT ASSIGNED REASON <i>DNMC Per CCR 3315(d)(1)</i>		

EVIDENCE / INFORMATION REQUESTED BY INMATE:

WITNESSES

WITNESSES REQUESTED AT HEARING (IF NOT PRESENT, EXPLAIN IN FINDINGS)

REPORTING EMPLOYEE STAFF ASSISTANT INVESTIGATIVE EMPLOYEE OTHER NONE

WITNESSES (GIVE NAME AND TITLE OR CDC NUMBER) <i>R. Gomez, C/o T. Henderson</i>	GRANTED <input type="checkbox"/> <input type="checkbox"/>	NOT GRANTED <input checked="" type="checkbox"/> <input checked="" type="checkbox"/>	WITNESSES (GIVE NAME AND TITLE OR CDC NUMBER) <i>A. Gomez N/A</i>	GRANTED <input type="checkbox"/> <input type="checkbox"/>	NOT GRANTED <input type="checkbox"/> <input type="checkbox"/>
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INVESTIGATIVE REPORT: Investigative Employees must interview the inmate charges, the reporting employee, and any others who have significant information, documenting the testimony of each person interviewed. Review of files, procedures, and other documents may also be necessary.

INVESTIGATOR'S SIGNATURE
►

DATE

COPY OF CDC 115A GIVEN INMATE

BY: STAFF'S SIGNATURE
► *D. Sheller*

TIME

10:00

DATE

10-05-06